ties for, transportation of freight or passengers within the State," etc., and section 4 provides that no discrimination in charges or facilities for transportation shall be made between individuals and transportation companies, by any means, nor shall any preferences be made in furnishing cars and motive power, etc. For violations of these sections a penalty is prescribed (sec. 12), which may be recovered by civil action by the party aggrieved. *Held*, the facts did not show such an unjust discrimination as to subject the company to the penalty at the suit of a shipper. So long as all the individuals at any given station are treated alike there can be no discrimination within the meaning of the act. The dissenting opinion maintains, however, that there is nothing in the act limiting the discrimination to individuals. See *Chicago and A. R. Co.* v. *People*, 67 Ill. 11.

EVIDENCE.

Evidence—Coroner's Verdict—Life Insurance—Suicide.—Germania Life Ins. Co. v. *Ross-Lewin et al.*, 51 Pac. Rep. (Col.) 488. In an action to recover upon an insurance policy, *held*, that the duly-certified verdict of the coroner's jury as to the alleged suicide of deceased was not admissible. The statutes prescribing the coroner's duties are construed as making him a conservator of the peace and the purpose of his inquisitions to furnish the foundation for a criminal trial where the death is shown to be felonious. As no judicial powers are conferred on the coroner by statute, the inquest proceedings are extra-judicial and not admissible as evidence to prove suicide. The English rule admitting such evidence is based on purely historical grounds and should not prevail over the injury to public policy which would result from the attempt to corruptly influence the inquests if such testimony were admitted. The Illinois cases, under statutes similar to those of Colorado, declare such evidence admissible. See, also, *Walther* v. *Ins. Co.*, 65 Col. 417, 4 Pac. 413; *Ins. Co.* v. *Newton*, 22 Wall. 32. Campbell, J., concurring specially, asserts the admissibility of such testimony, citing especially the common law and Illinois rule.

Bills and Notes—Liability of Parties—Oral Testimony.—Shuey v. *Adair*, 51 Pac. Rep. (Wash.) 388. An agreement between the maker, payee and indorser of a negotiable note, that the payee shall look to the indorser and not to the maker for payment, cannot be proved by oral evidence in order to relieve the maker of his responsibility. The cases on this point are in apparent and bewildering conflict, and many of them seem at first sight to sustain the admissibility of such testimony. But the cases where such evidence is rightly admitted fall within one of three principles, viz.: (1) Where the check or order drawn by the agent discloses the principal, see *Brockway* v. *Allen*, 17 Wend. 40; *Whitney* v. *Wyman*, 101 U. S. 392; *Hill* v. *Ely*, 9 Am. Dec. 376; *Cragin* v. *Lovell*, 109 U. S. 194, 3 Sup. Ct. 132, and cases there reviewed; (2) where there is enough on the face of the written instrument to render it doubtful whether it was the intention to bind the agent or the principal, see *Mechanics' Bank of Alexandria* v. *Bank of Columbia*, 5 Wheat. 326; *Michels* v. *Olmstead*, 14 Fed. 219; *Metcalf* v. *Williams*, 104 U. S. 93; *Kean* v. *Davis*, 21 N. J. Law 683; Mechem, Ag. § 449; and, (3) where the instrument was to be delivered upon the taking effect of some future stipulated condition, and it has been delivered before such condition is performed, see *Small* v. *Smith*, 1 Denio. 583; *Bank* v. *Lucknow*, (Minn.), 35 N. W. 434; *Westeman* v. *Krumweide*, (Minn.), 15 N. W. 255. As a matter of course the defense of fraud or mistake is always available, see *Hill* v. *Ely*, *supra*,

and *Small* v. *Smith*, *supra*. As casting some light upon the decisions of the Supreme Court of the United States on the point, and its construction of the Pennsylvania cases, which are concededly the cases which support the admissibility of this sort of testimony, see *Bust* v. *Bank*, 101 U. S. 93.

Action for Services—Incompetency as a Defense—Rebuttal Evidence.—State (Continental Match Co., prosecutor) v. *Smith*, 38 Atl. Rep. (N. J.) 969. Plaintiff, an artisan, brought a suit for breach of a contract of employment, the defense being incompetency, justifying his discharge. The lower court admitted evidence showing plaintiff's unsatisfactory work in another factory. To the claim that such admission was erroneous on the ground that the acts done in another place were *res inter alios actæ*, the court *held* such evidence to be admissible. See *Brierly* v. *Mills*, 128 Mass. 291.

Carriers—Injury to Passengers—Evidence—Statements of Plaintiff.—West Chicago St. Ry. Co. v. *Kennelly*, 48 N. E. (Ill.) 996. The testimony of a witness in an action for personal injury that the plaintiff "complained" of her injury the morning after the accident is not inadmissible as being a declaration in interest, but is admissible as a mere exclamation. But a statement by the same witness that plaintiff "complained of her side, and under the spine, in the back and this ankle," the morning after the accident, is not competent, because the statements of the plaintiff may have been made with a view to future litigation, and therefore declarations in interest. Statements of pain and suffering, past and present, are inadmissible in an action for personal injuries unless made to a physician or medical expert for the purpose of treatment or other legitimate purposes, or are made at the time of the injury so as to form part of the *res gestæ* (*Railroad Co.* v. *Sutton*, 42 Ill. 40; *Quaife* v. *Railway Co.*, 28 Wis. 524).

TAXATION.

City Lots—Assessments for Street Improvements—Election of Remedies.—City of Cincinnati v. *Emerson*, 48 N. E. Rep. (Ohio) 667. An owner of a city lot, who has two grounds for contesting the validity of an assessment imposed thereon for street improvements, one of which is common to him and the abutting owners of other lots, and the other pertains to his lot only, and who elects to bring an action enjoining the collection of the assessment in his and the abutting owners' behalf, is deemed to have waived the right to bring an action on the ground which pertained to his lot alone. A judgment rendered under the first action refusing the relief sought is a bar to the second action, even though the first action, if maintained, would have defeated the assessment altogether, while the second action, if successful, would have merely reduced the assessment against the one particular lot.

Privilege Tax—Exemption—Class and Special Legislation—Motion of Legislature.—Knoxville & O. R. Co. v. *Harris, Comptroller*, 43 S. W. Rep. (Tenn.) 115. A statute—Acts 1895 (Ex. Sess.), p. 592, c. 4, § 7—providing that specified corporations should pay specified taxes on specified privileges, and among them railroad companies, not paying an *ad valorem* tax to the State, discloses an obvious intention of the assembly to treat as a tax privilege the business of the railroad and not the abstract condition of "not paying an *ad valorem* tax to the State." Such a tax is not objectionable class legislation, in that there are only two such companies, because it applies equally to all corporations in a similar condition, and makes a natural and